

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

BIC CORPORATION,

Plaintiff,

v.

ARROW LIGHTER, INC. d/b/a MK
LIGHTER, INC. and MK LIGHTER
COMPANY, EXCEL WHOLESALE
DISTRIBUTORS INC., MILAN IMPORT
EXPORT COMPANY, LLC, JOHN DOE
COMPANIES 1-10, and JOHN OR JANE
DOES 1-10,

Defendants.

Case No. 1:18-cv-06922-DLI-PK

**DEFENDANTS ARROW LIGHTER, INC. D/B/A MK LIGHTER, INC. AND MK
LIGHTER COMPANY AND EXCEL WHOLESALE DISTRIBUTORS INC.’S
ANSWER AND DEFENSES TO COMPLAINT**

Defendants Arrow Lighter, Inc. d/b/a MK Lighter Inc. and MK Lighter Company (“Arrow”) and Excel Wholesale Distributors Inc. (“Excel”) (collectively, hereinafter, the “Defendants”) answer Plaintiff BIC Corporation’s (“Plaintiff”) Complaint as follows:

NATURE OF THE ACTION

1. Defendants admit that this action was brought by Plaintiff but deny the remainder of the allegations in paragraph 1 as to these Defendants.

2. Defendants admit that Plaintiff’s action for trade dress infringement is being brought under 15 U.S.C. §§ 1114, 1125, and NY Gen. Bus. Law §§ 349-360, but deny any liability thereunder.

PARTIES

3. Defendants lack knowledge and information sufficient to form a belief as to the truth

of the allegation in paragraph 3, and therefore deny same.

4. Defendants admit the allegation in paragraph 4.

5. Defendants admit the allegation in paragraph 5.

6. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 6, and therefore deny same.

7. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 7, and therefore deny same.

JURISDICTION AND VENUE

8. Defendants admit that the claims in this Complaint were brought under the Lanham Act, 15 U.S.C. § 1051 *et seq.* and New York state statutory and common law, but deny any liability thereunder.

9. Defendants admit that the Court has subject matter jurisdiction over these causes of action based on 15 U.S.C. §§ 1121 and 28 U.S.C. §§ 1331, 1332 and 1338, but deny any liability thereunder.

10. Defendants admit the Court has jurisdiction over the state law claims under 28 U.S.C. § 1367(a), but deny any liability thereunder.

11. Defendants admit venue is proper in this Court under 28 U.S.C. § 1391(b), but deny any liability thereunder.

12. Defendants admit venue is proper in this Court, admit that Defendants have transacted business in the state of New York, but lack information sufficient to form a belief as to the truth of the allegations against the remaining Defendants, and therefore deny the remainder of the allegations.

13. Defendants admit that this Court has personal jurisdiction over Defendant Arrow in

this action only. Defendants deny the remainder of the allegations in paragraph 13 to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act.

14. Defendants admit that this Court has personal jurisdiction over Defendant Excel in this action only. Defendants deny the remainder of the allegations in paragraph 14 to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act.

15. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 15, and therefore deny same.

16. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 16, and therefore deny same.

17. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 17, and therefore deny same.

FACTUAL BACKGROUND

18. Defendants admit Plaintiff manufactures and distributes pocket lighters, but lack knowledge and information sufficient to form a belief as to the truth of the remainder of the allegations in paragraph 18, and therefore deny same.

19. In response to paragraph 19, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 19, and therefore deny same.

20. In response to paragraph 20, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the

remaining allegations contained in paragraph 20, and therefore deny same.

21. In response to paragraph 21, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 21, and therefore deny same.

22. In response to paragraph 22, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 22, and therefore deny same.

23. In response to paragraph 23, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 23, and therefore deny same.

24. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 24, and therefore deny same.

25. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 25, and therefore deny same.

26. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 26, and therefore deny same.

27. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 27, and therefore deny same.

28. Defendants lack knowledge and information sufficient to form a belief as to the truth

of the allegation in paragraph 28, and therefore deny same.

29. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 29, and therefore deny same.

30. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 30, and therefore deny same.

31. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 31, and therefore deny same.

32. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 32, and therefore deny same.

ALLEGED UNLAWFUL ACTS OF DEFENDANTS

33. In response to paragraph 33, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 33, and therefore deny same.

34. In response to paragraph 34, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 34, and therefore deny same.

35. In response to paragraph 35, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 35, and therefore deny same.

36. In response to paragraph 36, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 36, and therefore deny same.

37. In response to paragraph 37, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 37, and therefore deny same.

38. In response to paragraph 38, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 38, and therefore deny same.

39. Defendants deny the allegations in paragraph 39.

40. In response to paragraph 40, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 40, and therefore deny same.

41. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 41, and therefore deny same.

42. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 42, and therefore deny same.

43. Defendants are without sufficient knowledge or information to form a belief as to the

truth of the allegations contained in paragraph 43, and therefore deny same.

44. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 44, and therefore deny same.

45. In response to paragraph 45, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 45, and therefore deny same.

46. In response to paragraph 46, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 46, and therefore deny same.

47. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 47, and therefore deny same.

48. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 48, and therefore deny same.

49. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 49, and therefore deny same.

50. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 50, and therefore deny same.

51. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 51, and therefore deny same.

52. Defendants lack knowledge and information sufficient to form a belief as to the truth

of the allegation in paragraph 52, and therefore deny same.

53. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 53, and therefore deny same.

54. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 54, and therefore deny same.

55. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 55, and therefore deny same.

56. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 56, and therefore deny same.

57. In response to paragraph 57, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 57, and therefore deny same.

58. In response to paragraph 58, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 58, and therefore deny same.

59. In response to paragraph 59, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 59, and therefore deny same.

60. In response to paragraph 60, Defendants deny each and every allegation to the extent

that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 60, and therefore deny same.

61. In response to paragraph 61, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 61, and therefore deny same.

62. In response to paragraph 62, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 62, and therefore deny same.

63. In response to paragraph 63, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 63, and therefore deny same.

64. In response to paragraph 64, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 64, and therefore deny same.

65. In response to paragraph 65, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the

remaining allegations contained in paragraph 65, and therefore deny same.

66. In response to paragraph 66, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 66, and therefore deny same.

67. In response to paragraph 67, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 67, and therefore deny same.

68. In response to paragraph 68, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 68, and therefore deny same.

FIRST CLAIM FOR RELIEF

(Federal Trademark Infringement)

69. In response to Paragraph 69, Defendants repeat and reallege their responses to paragraphs 1 through 68, inclusive, of the Complaint as if fully restated herein.

70. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 70, and therefore deny same.

71. In response to paragraph 71, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the

remaining allegations contained in paragraph 71, and therefore deny same.

72. In response to paragraph 72, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 72, and therefore deny same.

73. In response to paragraph 73, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 73, and therefore deny same.

74. In response to paragraph 74, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 74, and therefore deny same.

75. In response to paragraph 75, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 75, and therefore deny same.

76. In response to paragraph 76, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 76, and therefore deny same.

SECOND CLAIM FOR RELIEF

(Federal False Designation of Origin)

77. In response to Paragraph 77, Defendants repeat and reallege their responses to paragraphs 1 through 76, inclusive, of the Complaint as if fully restated herein.

78. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 78, and therefore deny same.

79. In response to paragraph 79, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 79, and therefore deny same.

80. In response to paragraph 80, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 80, and therefore deny same.

81. In response to paragraph 81, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 81, and therefore deny same.

82. In response to paragraph 82, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 82, and therefore deny same.

83. In response to paragraph 83, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 83, and therefore deny same.

84. In response to paragraph 84, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 84, and therefore deny same.

THIRD CLAIM FOR RELIEF

(Contributory Trademark Infringement)

85. In response to Paragraph 85, Defendants repeat and reallege their responses to paragraphs 1 through 84, inclusive, of the Complaint as if fully restated herein.

86. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 86, and therefore deny same.

87. In response to paragraph 87, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 87, and therefore deny same.

88. In response to paragraph 88, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 88, and therefore deny same.

89. In response to paragraph 89, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 89, and therefore deny same.

90. In response to paragraph 90, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 90, and therefore deny same.

91. In response to paragraph 91, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 91, and therefore deny same.

92. In response to paragraph 92, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 92, and therefore deny same.

93. In response to paragraph 93, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 93, and therefore deny same.

94. In response to paragraph 94, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act.

Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 94, and therefore deny same.

95. In response to paragraph 95, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 95, and therefore deny same.

FOURTH CLAIM FOR RELIEF

(Federal Dilution)

96. In response to Paragraph 96, Defendants repeat and reallege their responses to paragraphs 1 through 95, inclusive, of the Complaint as if fully restated herein.

97. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 97, and therefore deny same.

98. In response to paragraph 98, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 98, and therefore deny same.

99. In response to paragraph 99, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 99, and therefore deny same.

100. In response to paragraph 100, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act.

Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 100, and therefore deny same.

101. In response to paragraph 101, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 101, and therefore deny same.

102. In response to paragraph 102, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 102, and therefore deny same.

103. In response to paragraph 103, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 103, and therefore deny same.

104. In response to paragraph 104, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 104, and therefore deny same.

105. In response to paragraph 105, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 105, and therefore deny same.

FIFTH CLAIM FOR RELIEF

(Common Law Trademark Infringement and Unfair Competition)

106. In response to Paragraph 106, Defendants repeat and reallege their responses to paragraphs 1 through 105, inclusive, of the Complaint as if fully restated herein.

107. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 107, and therefore deny same.

108. In response to paragraph 108, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 108, and therefore deny same.

109. In response to paragraph 109, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 109, and therefore deny same.

110. In response to paragraph 110, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 110, and therefore deny same.

111. In response to paragraph 111, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 111, and therefore deny same.

112. In response to paragraph 112, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 112, and therefore deny same.

113. In response to paragraph 113, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 113, and therefore deny same.

114. In response to paragraph 114, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 114, and therefore deny same.

115. In response to paragraph 115, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 115, and therefore deny same.

SIXTH CLAIM FOR RELIEF

(Deceptive Practices and False Advertising)

116. In response to Paragraph 116, Defendants repeat and reallege their responses to paragraphs 1 through 115, inclusive, of the Complaint as if fully restated herein.

117. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 117, and therefore deny same.

118. In response to paragraph 118, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 118, and therefore deny same.

119. In response to paragraph 119, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 119, and therefore deny same.

120. In response to paragraph 120, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 120, and therefore deny same.

121. In response to paragraph 121, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 121, and therefore deny same.

122. In response to paragraph 122, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 122, and therefore deny same.

123. In response to paragraph 123, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act.

Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 123, and therefore deny same.

SEVENTH CLAIM FOR RELIEF

(Trademark Dilution and Injury to Business Reputation)

124. In response to Paragraph 124, Defendants repeat and reallege their responses to paragraphs 1 through 123, inclusive, of the Complaint as if fully restated herein.

125. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in paragraph 125, and therefore deny same.

126. In response to paragraph 126, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 126, and therefore deny same.

127. In response to paragraph 127, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 127, and therefore deny same.

128. In response to paragraph 128, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 128, and therefore deny same.

129. In response to paragraph 129, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act.

Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 129, and therefore deny same.

130. In response to paragraph 130, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 130, and therefore deny same.

131. In response to paragraph 131, Defendants deny each and every allegation to the extent that it alleges, directly or by implication, that any act of Defendants constitutes an infringing act. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 131, and therefore deny same.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Invalidity)

Defendants allege the Alleged Trade Dress that is the subject of BIC's Complaint is invalid, for among other things, that it is generic. Defendants reserve the right to alter, amend, or supplement this affirmative defense as the matter proceeds.

SECOND AFFIRMATIVE DEFENSE

(Non-Infringement)

Defendants allege they have not directly infringed, indirectly infringed, contributed to or induced infringement of any valid or enforceable rights of BIC's Alleged Trade Dress, and have not otherwise committed any infringing acts, including without limitation in violation of Section 32 of the Lanham Act, 15 U.S.C. §§ 1114, Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a),

contributory trademark infringement under Section 43 of the Lanham Act, 15 U.S.C. §§ 1114(1)(a), Section 43© of the Lanham Act, 15 U.S.C. § 1125©.

THIRD AFFIRMATIVE DEFENSE

(Lack of Unfair Act/Lack of Likelihood of Confusion)

Defendants allege they have committed no unfair acts and/or acts that would create an actual or potential likelihood of confusion.

FOURTH AFFIRMATIVE DEFENSE

(Failure to State A Claim)

Defendants allege BIC's Complaint fails to state a claim upon which relief can be granted.

FIFTH AFFIRMATIVE DEFENSE

(Functionality)

Defendants allege BIC's claims are barred in whole or in part on the basis that the Alleged Trade Dress at issue is/are functional.

SIXTH AFFIRMATIVE DEFENSE

(Unenforceability – Estoppel, Acquiescence, Waiver, and In Pari Delicto)

Defendants allege BIC is barred in whole or in part by the doctrine of estoppel, acquiescence, waiver, and/or in pari delicto from enforcing the Alleged Trade Dress against Defendants.

SEVENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Defendants allege BIC's Alleged Trade Dress is/are void and unenforceable by reason of the equitable doctrine of unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

(Trademark/Trade Dress Misuse)

Defendants allege BIC is barred from asserting the Alleged Trade Dress by the equitable doctrine of trademark/trade dress misuse.

NINTH AFFIRMATIVE DEFENSE

(Improper Purpose)

Defendants allege BIC's recovery is barred in whole or in part because BIC's Complaint was filed for an improper purpose and acts as an improper restraint of trade.

TENTH AFFIRMATIVE DEFENSE

(Fair Use Doctrine)

Defendants allege BIC's recovery is barred in whole or in part because Defendants' alleged usage of the Alleged Trade Dress constitutes fair use including without limitation, pursuant to the provisions of 15 U.S.C. §1115 (b)(4).

ELEVENTH AFFIRMATIVE DEFENSE

(Dilution)

Defendants allege BIC's recovery is barred in whole or in part because the Alleged Trade Dress is diluted.

TWELFTH AFFIRMATIVE DEFENSE

(Equitable Estoppel)

Defendants allege BIC's recovery is barred in whole or in part by the doctrine of equitable estoppel.

THIRTEENTH AFFIRMATIVE DEFENSE

(Laches)

Defendants allege BIC's recovery is barred in whole or in part by the doctrine of laches.

FOURTEENTH AFFIRMATIVE DEFENSE

(Waiver)

Defendants allege BIC's recovery is barred in whole or in part by the doctrine of waiver.

FIFTEENTH AFFIRMATIVE DEFENSE

(Defenses Pursuant to Lanham Act)

Defendants assert any and all available defenses to the Complaint pursuant to the Lanham Act.

SIXTEENTH AFFIRMATIVE DEFENSE

(No Causation)

Defendants allege BIC is barred in whole or in part because BIC's alleged damages, if any, were not caused by Defendants.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Relief Not in the Public Interest)

Defendants allege the relief sought by BIC does not and would not further the public interest and there are strong public reasons for denying BIC the relief sought.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Right to Assert Additional Affirmative Defenses)

Defendants presently have insufficient knowledge or information upon which to form a belief as to whether it has additional, as yet unstated, affirmative defenses. Defendants reserve the right to assert additional affirmative defenses.

Respectfully submitted,

Dated: May 13, 2019

/s/ Charles C.H. Wu
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Lighter Inc. and MK Lighter Company and
Excel Wholesale Distributors Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of May, 2019, I caused service of the foregoing document to be made by electronic filing with the Clerk of the Court using the CM/ECF System, which will send a Notice of Electronic Filing to all parties with an e-mail address of record, who have appeared and consented to electronic service in this action.

/s/ Charles C.H. Wu